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Supreme Court, U.S.
FILED
AUG 16 1989
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CLERK

No. 89-276

In The
SUPREME COURT of the UNITED STATES
October Term, 1989

—o—

FRANK A. ENGLAND, III,
Petitioner,
vs.
DORCAS HARDY,
Respondent.

—o—

SUPPLEMENTAL APPENDIX
to
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

—o—

FRANK A. ENGLAND, III
Pro Se
129 Carlisle Street
Benicia, CA 94510
(707) 745 4257

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"MEMORANDUM" 1

PURPOSE

As per this Court's letter of October 4, 1989, and in order to comply with Rule 21 of the Rules of the Supreme Court, Petitioner herewithin presents, with footnotes, the "MEMORANDUM" decision of the Ninth Circuit Court of Appeals, filed on April 10, 1989, and reproduced verbatim to the best of his ability.

So submitted this 12th day of October, 1989:

FRANK A. ENGLAND,III

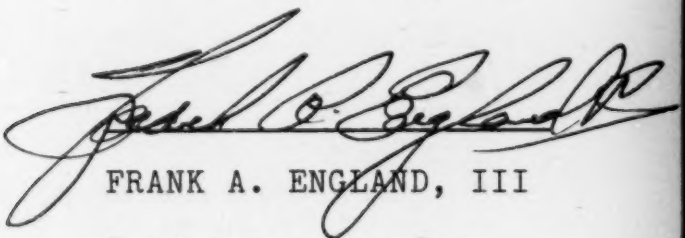
129 Carlisle Street
Benicia, CA 94510
(707) 745 4257

Petitioner Pro Se

ACKNOWLEDGMENT OF SERVICE

Petitioner, Frank A. England, III, did cause to be served upon the Solicitor General of the United States, three copies of this Supplemental Appendix, addressed to the Department of Justice, Washington, D.C., 20530, by depositing said document in the United States mail, with sufficient postage prepaid, this 12th day of October, 1989; sent by certified mail, article # P 753 677 817.

With all due Respect,



FRANK A. ENGLAND, III

Petitioner Pro Se

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANK AUSTIN ENGLAND, III Plaintiff-Appellant, v. DORCAS HARDY, Commissioner of Social Security, Defendant-Appellee.	No. 88-2479 DC No. CV-88-0411-JPV MEMORANDUM*

Appeal from the United States District Court for the Northern District of California
John P. Vukasin, District Judge, Presiding

Submitted April 5, 1989**
San Francisco, California

Before: POOLE, REINHARDT, and O'SCANNLAIN, Circuit Judges

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for submission on the record and briefs and without oral argument. Fed. R. App. P. 34(a), Ninth Circuit Rule 34-4.

In July 1984, Frank Austin England, III ("England" or "appellant") began correspondence with the Social Security Administration ("SSA"), indicating his belief in a lawful right to withdraw from the social security program. He was informed by the SSA that the law does not permit individuals to voluntarily withdraw from the program. Nonetheless, England renewed his insistence on a right to withdraw from the program. England was again denied his request.

On February 8, 1988, England filed an application for writ of habeas corpus claiming that he was being denied his liberty to withdraw from the social security program. On March 28, 1988, the district court dismissed the petition for lack of subject matter jurisdiction. England timely appeals.

ANALYSIS

A. Standard of Review

The decision whether to grant or deny a

petition for habeas corpus is reviewed de novo. Chatman v. Marquez, 754 F.2d 1531, 1533-34 (9th Cir.), cert. denied, 474 U.S. 841 (1985).

B. Merits

Appellant argues that he is within the meaning of being either a "prisoner" or in "custody" in that he is being forced to contribute to the Social Security program by way of imposed taxes. Thus, he seeks relief by way of a writ of habeas corpus from the imposition of involuntary support of the federal Social Security system pursuant to 28 U.S.C. § 2241 et seq.

Section 2241(c) states that:

> The writ of habeas corpus shall not extend to a prisoner unless-
>
> (1) He is in custody under or by color of the authority of the United States . . .
>
> (2) He is is custody for an act done or omitted in pursuance of an Act of Congress . . .

> (3) He is in custody in violation of the Constitution of laws . . .
>
> (4) He, being a citizen of a foreign state and domiciled therein, is in custody . . .
>
> (5) It is necessary to bring him into court to testify or for trial . . .

Section 2241(c) has been interpreted as extending the jurisdiction of the court to issue a writ of habeas corpus only to a prisoner who is in custody. Peyton v. Rowe, 391 U.S. 54, 58-59 (1968).

England contends that he is within the meaning of being either a prisoner or in custody relying in part on definitions of "prisoner" and "custody" provided in Black"s Law Dictionary, 2d ed. (1910).

England purports to find support in Jones[1] v. Commissioner, 371 U.S. 236 (1963), where the Court said that "besides physical imprisonment, there are other restraints on a man's

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1 [Jones v. Cunningham]

liberty, restraints that shared[2] by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus." Id. at 240. Presumably, England perceives his mandatory contributions to the Social Security system to be a restraint on his liberty to be free of tax obligations, a restraint sufficient to support the issuance of habeas corpus.

Yet, a careful reading of Jones clearly distinguishes it from the instant case. In Jones, the Court noted that the petitioner had not been unconditionally released from jail. Further, the Court noted that in some of the cases upon which the court of appeals relied, "the petitioner had been completely and unconditionally released from custody; such cases are obviously not controlling here...." Jones, 371 U.S. at 241 (footnote Omitted). Thus, even Jones requires physical

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2 [... restraints NOT shared...]

custody before appellant may have a cause of action. Id.

The facts in the present case do not show that England was ever in custody or a prisoner in the sense espoused by Jones. See generally Jones, 371 U.S. at 236. Because England is neither a prisoner nor in custody, the district court lacked subject matter jurisdiction. Therefore, the action was properly dismissed. Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

AFFIRMED.